MOTION FILED
MAR 28

No. 88-1486 (2)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1988

SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY, *et al.*
Petitioners,

v.

TRANSPORT WORKERS' UNION OF PHILADELPHIA, LOCAL 234, *et al.*
Respondents.

MOTION TO WITHDRAW IN PART PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Dated: March 28, 1989

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Petitioner, Southeastern Pennsylvania Transportation Authority, by its counsel of record, moves for leave to withdraw the second of the "Questions Presented" and Section II of the Reasons For Granting The Writ contained in its Petition for a Writ of Certiorari to the United States Court of Appeals For the Third Circuit filed March 8, 1989, and in support thereof states as follows:

1. The Petition For Writ of Certiorari To The United States Court of Appeals For The Third Circuit (the Petition) presented two questions. The first question raised an issue under the Railway Labor Act, 45 U.S.C. §151 et. seq; the second question raised an issue under the Fourth Amendment to the United States Constitution as applied to states under the Fourteenth Amendment to the United States Constitution.

2. Since the filing of the Petition, Southeastern Pennsylvania Transportation Authority (SEPTA) and respondent Transport Workers' Union of Philadelphia, Local 234 (TWU) have reached agreement on a new collective bargaining contract which includes an amicable resolution of the return to work drug and alcohol testing controversy embodied in the second of the "Questions Presented."

3. The agreement requires SEPTA to move for withdrawal of the second question presented relating to return to work drug and alcohol testing.

WHEREFORE, SEPTA respectfully requests that the second question presented and Section II of the Reasons For Granting The Writ be deemed withdrawn from the Petition and that there remain for consideration by the Court only the first question presented relating to the status of fitness for duty random drug and alcohol testing under the Railway Labor Act, 45 U.S.C. §151 et seq.

Respectfully submitted,

DILWORTH, PAXSON, KALISH
& KAUFFMAN

/s/ John F. Smith, III

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Attorneys for Petitioners
Southeastern Pennsylvania
Transportation Authority

Dated: March 28, 1989

CERTIFICATE OF SERVICE

I, JOHN F. SMITH, III, a member of the Bar of this Court, hereby certify that on this 28th day of March, 1989, three copies of a Motion to Withdraw in Part Petition For a Writ of Certiorari in the above entitled case were mailed, first class postage prepaid, to the following counsel for all the respondents herein:

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I further certify that all parties required to be served have been served.

/s/ John F. Smith, III
John F. Smith, III

Dated: March 28, 1989